

RESOLUTION

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

**GUIDELINES AND CRITERIA
FOR GRANTING TAX ABATEMENTS IN
BRAZOS COUNTY, TEXAS**

**I.
INTRODUCTION**

WHEREAS, the attraction of long-term investment and the establishment of new jobs in the Brazos County would enhance the economic base of Brazos County; and,

WHEREAS, Brazos County has certain governmental powers that enable it to take affirmative and effective action to stimulate economic growth; and,

WHEREAS, tax abatement is one of the principal means by which the public sector and the private sector can forge a partnership to promote real economic growth within the community; and,

WHEREAS, tax incentives offered must be strictly limited in application to those new or existing industries that bring new wealth into the community in order to avoid reducing the needed tax revenues of the County; and,

WHEREAS, the Property Redevelopment and Tax Abatement Act (the "Act") Chapter 312 of the Texas Tax Code authorizes the County to provide property tax abatement for limited periods of time as an inducement for the development or redevelopment of a property; and,

WHEREAS, the Act requires eligible taxing jurisdictions to establish guidelines and criteria as to eligibility for tax abatement agreements prior to granting any future tax abatement, said guidelines to be unchanged for a two (2) year period unless amended or repealed by a three-fourths (3/4ths) vote of the Brazos County Commissioners Court; and,

WHEREAS, this document states guidelines and criteria that the County will utilize in attempts to assert positive economic development, but should not be read to imply or suggest that Brazos County, Texas is under an obligation to afford these opportunities to any applicants; and,

WHEREAS, the governing body of a taxing unit may not enter into a tax abatement agreement unless it finds that the terms of the agreement and the property subject to the agreement meet the applicable guidelines and criteria adopted by the County under the Act; and,

WHEREAS, the adoption of the guidelines by Brazos County does not: limit the discretion of the County to decide whether to enter into a specific tax abatement agreement; limit the discretion of the County to

delegate to its employees the authority to determine whether or not the County should consider a particular application or request for tax abatement; or create any property, contract, or other legal right in any person to have the County consider or grant a specific application or request for tax abatement.

WHEREAS, these guidelines and criteria are designed to allow maximum flexibility in addressing the unique concerns of each applicant while enabling the County to respond to the changing needs of the community.

NOW, THEREFORE, BE IT RESOLVED, that Brazos County Texas, acting by and through its duly elected Commissioners Court, hereby elects to participate in tax abatements and hereby adopts these guidelines and criteria for granting tax abatements in Brazos County.

II. DEFINITIONS

- A. "Abatement" means the full or partial exemption from ad valorem taxes of certain real and/or personal property in a Reinvestment Zone designated for economic development purposes pursuant to Chapter 312 of the Texas Tax Code.
- B. "Agreement" means a contractual agreement between a property owner and/or lessee and an eligible jurisdiction for the purposes of tax abatement.
- C. "Base Year Value" means the assessed value of eligible property January 1 preceding the execution of the Agreement, plus the agreed upon value of eligible property improvements made after January 1, but before the execution of the Agreement.
- D. "County" means Brazos County, Texas.
- E. "Deferred Maintenance" means improvements necessary for continued operations which do not improve the productivity or alter the process technology.
- F. "Distribution Center Facility" means buildings and structures, including machinery and equipment, used or to be used primarily to receive store, service, or distribute goods or materials owned by the facility operator where a majority of the goods or services are distributed to points at least fifty (50) miles from location in the County.
- G. "Expansion" means the addition of buildings, structures, fixed machinery, or equipment for purposes of increasing production capacity.
- H. "Facility" means property improvements completed or in the process of construction which together comprise an integral whole.
- I. "Manufacturing Facility" means buildings and structures including machinery and equipment, the primary purpose of which is or will be the manufacture of tangible goods or materials or the processing of

such goods or materials by physical chemical change, including the assembly of goods and materials from multiple sources in order to create a finished or semi-finished product.

J. “Modernization” means the replacement and upgrading of existing facilities which increases the productivity input or output, updates the technology or substantially lowers the unit cost of the operation. Modernization may result from the construction, alteration, or installation of buildings, structures, fixed machinery or equipment. It shall not be for the purpose of reconditioning, refurbishing, or repairing except as may be integral to or in direct connection with an existing expansion.

K. “New Facility” means a property previously undeveloped which is placed into service by means other than, or in conjunction with, expansion or modernization.

L. “Other Basic Industry” means buildings or structures, including fixed machinery and equipment not elsewhere described, used or to be used for the production of products or services which serve a market primarily outside the County and result in the creation of new permanent jobs and create new wealth in the County.

M. “Personal Property” means tangible personal property located on the real property, excluding that personal property located on the real property prior to the period covered by the abatement with the County, and other than inventory or supplies.

N. “Productive Life” means the number of years a property improvement is expected to be in service.

O. “Project” means any property improvement including expansion, modernizations, and new facilities; but excluding any deferred maintenance.

P. “Reinvestment Zone” means any area of the County which has been designated a reinvestment zone for tax abatement purposes and which is located within the taxing jurisdiction of the County. It is the intent of the County to designate reinvestment zones on a case-by-case basis in order to maximize the potential incentives for eligible enterprises to locate or expand within the County.

Q. “Regional Entertainment Facility” means buildings and structures, including machinery and equipment, used or to be used to provide entertainment through the admission of the general public where the majority of the users reside at least fifty (50) miles from its location in the County.

R. “Regional Service Facility” means buildings and structures, including machinery and equipment, used or to be used to provide services to the general public.

S. “Research Facility” means buildings and structures, including machinery and equipment, used or to be used primarily for research or experimentation to improve or develop new tangible goods or materials or to improve or develop the production processes thereto.

T. “Targeted Enterprise” means the following facilities – distribution center facility, manufacturing facility, regional entertainment facility, research facility, regional service facility, or any other basic industry.

III. CRITERIA FOR TAX ABATEMENT

A. General Criteria. All applications must meet all of the following general criteria before being considered for tax abatement:

1. The project expands the local tax base.
2. The project creates permanent full-time employment opportunities.
3. The project would not otherwise be developed.
4. The project makes a contribution to enhancing further economic development.
5. The project must remain in good standing with all governmental and environmental regulations.
6. The project must not have any of the following objections:
 - a. there would be substantial adverse effect on the provision of government services on tax base;
 - b. the applicant has insufficient financial capacity;
 - c. planned or potential use of the property would constitute a hazard to public safety;
 - d. planned or potential use of the property would create adverse impacts to adjacent properties;
 - e. any violation of laws of the United States or State of Texas or ordinances of the City of Bryan, Texas or City of College Station, Texas, or order of Brazos County, Texas would occur; or,
 - f. it is an improvement project financed with tax increment bonds.
7. Requests for abatements will not be considered if, prior to the submission of an application, the project is already substantially underway or completed. A project will be considered to be substantially underway if actions such as, but not limited to, the following have occurred:
 - a. the demolition, site preparation, or the installation of infrastructure has begun;
 - b. a building permit has been issued for construction not associated with mitigating an environmental hazard;

- c. construction (including renovations or tenant finish-out) has begun; or,
- d. equipment, inventory, or employees have been relocated to the new site.

Execution of a lease, the mitigation of environmental problems, the purchase of land, the completion of an environmental assessment, or the preparation of architectural and engineering plans do not constitute a project being substantially underway.

- 8. Requests for an abatement will not be considered for property that will be used in whole or in part for a sexually-oriented business, including but not limited to condoning, legitimizing, or promoting obscene materials, nude or topless modeling or dancing, adult motel operations, escort services, sexual encounter centers, sex phone centers, or any other sexually-oriented business activity. Similarly, property receiving an existing abatement for another use cannot convert this property for use as a sexually-oriented business or an establishment and still retain the abatement.
- 9. Requests for an abatement will not be considered for an applicant with which the County is currently involved in, or has within the past thirty-six (36) months been involved in, litigation, a pending claim, or unsatisfactory contractual performance, nor to any applicant indebted to the County for ad valorem taxes or other obligations.

B. Specific Criteria. If the project in the application meets the general criteria, is a facility of a Targeted Enterprise, and has a capital cost that exceeds Ten Million Dollars and No/100ths (\$10,000,000.00) then abatement of any or all of the increased value will be considered. In no case would tax abatement exceed the maximum allowed by state law, or fifty per cent (50%) for five (5) years. Factors to be considered in determining the portion of the increased value to be abated and the duration of the abatement include, but are not limited to:

- 1. Total amount of the increased value;
- 2. Total number of jobs created;
- 3. Type of jobs created;
- 4. Dollar Value of payroll created;
- 5. Other costs and revenues associated with the application.

The County reserves the right to offer incentives that are greater than fifty per cent and or longer than five (5) years for projects that significantly exceed the Specific Criteria.

IV.
APPLICATIONS FOR REINVESTMENT ZONES AND TAX ABATEMENTS

A. All requests for reinvestment zones and tax abatements in the jurisdiction of Brazos County, Texas shall be made by filing a written application with the Brazos County Commissioners Court after addressing all criteria questions contained in this document. An application for designation of a reinvestment zone and for tax abatement may be combined and submitted jointly. Such applications may be filed with an agent or representative of the County hired to administer the County's program of tax abatement.

All applications shall include the following, unless the County has waived a requirement that it has deemed unnecessary to properly evaluate the request:

1. a general description of the project including purpose and explanation of the kind, number, and location of all proposed improvements as well as how the project will meet the criteria established by this document.
2. a plat showing the precise location of the property and all improvements thereon, all roadways within 500 feet of the site and all existing zoning and land uses within 500 feet of the site (a complete legal description shall be provided if the property is described by metes and bounds).
3. a completed cost estimate of the project by land, building, equipment, inventory, and personality categories.
4. a description of the methods of financing all estimated costs and the time when related costs or monetary obligations are to be incurred, estimated number of employment opportunities the project creates over the period of the abatement, including gross annual payroll of permanent time and part-time employees remaining after construction is complete.
5. a detailed time schedule for undertaking and completing the project.
6. a fee in the amount of One Thousand Dollars and No/100ths (\$1,000.00).

B. After reviewing the application, if the County staff or its agent or representative finds the application to be complete and accurate and meets the criteria established by this document, the County staff or its agent or representative may then do or cause to be done an impact study, which the applicant may be required to pay or participate in paying for, setting forth the impact of the proposed reinvestment zone and tax abatement agreement. This study shall include, but not be limited to, a cost benefit analysis of the creation of the investment zone and the abatement of taxes.

C. After establishing the benefits of the proposal, the County staff or its agent or representative may propose that the County offer a tax abatement agreement to the applicant. The County staff or its agent or representative may then propose the amount and duration of the tax abatement to the applicants, and formally offer the tax abatement to the applicant.

D. Having completed all the required steps in the process and having been assured by the applicant that it wishes to proceed, the County may then follow procedures in accordance with the Texas Tax Code Chapter 312 and establish a reinvestment zone and tax abatement agreement.

V.

DESIGNATION OF A REINVESTMENT ZONE AND TAX ABATEMENT

A. Prior to granting tax abatement, Brazos County, by Order, shall designate an area as a reinvestment zone unless such zone has been previously established by a municipality within the County. Prior to adopting such an Order, the Brazos County Commissioners Court must conduct a public hearing on the designation that entitles all interested persons to speak and present evidence for or against the designation. No later than the seventh (7th) day before the date of the hearing, notice of the hearing must be:

1. Published in a newspaper having general circulation in the County; and
2. Delivered in writing to the presiding officer of the governing body of each taxing unit that includes in its boundaries real property that is to be included in the proposed reinvestment zone.
3. Posted on the county's website.
4. Delivered to The Brazos Valley Economic Development Corporation or its successor organization.

B. The County, by resolution or order, may enter into a tax abatement agreement. At least thirty (30) days before entering into the agreement, the County will deliver written notice of its intent to each taxing unit that is included in the reinvestment zone,

1. Any agreement will include, but not be limited to, the following specific terms:
 - a. all appropriate stipulations included in the application, as outlined by this document, for a reinvestment zone and tax abatement agreement.
 - b. the amount and duration of the tax abatement.
 - c. a method for determining the qualifications of meeting the criteria and a warranty and guarantee to meet and maintain these qualifications over the term of the agreement; the County will be allowed, upon written request and reasonable notice, to inspect and audit such records of the applicant as are necessary to substantiate that the applicant is meeting criteria agreed upon during the term of the abatement;

- d. a provision in the event the agreement is terminated for whatever reason, or the applicant fails to fulfill the terms and provisions thereof, the tax abatement agreement will be determined null and void and all or some portion of abated taxes, as may be determined by the Brazos County Commissioners Court in its sole discretion, shall be paid immediately to the County.
- e. access to and authorized inspection of the property by County employees, agents or representatives to ensure that the improvements or construction are made according to specifications and conditions of the agreement.

C. An agreement may be modified or terminated by the mutual consent of the parties in the same manner that the agreement was approved and executed; provided, however, the agreement may not be altered to provide for tax abatement for a period of more than five (5) years.

D. This Resolution shall be posted on the Brazos County website.

RESOLVED this _____ day of _____, 2023.

Duane Peters
County Judge

Steve Aldrich
County Commissioner, Precinct 1

Chuck Konderla
County Commissioner, Precinct 2

Nancy Berry
County Commissioner, Precinct 3

Wanda J. Watson
County Commissioner, Precinct 4

ATTEST:

Karen McQueen, County Clerk

